Supreme Court, U. S.
FILED
JUN 23 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

NO. 77-1636

ROSALIE REED,

Petitioner,

vs.

THE CITY OF LOS ANGELES, RECREATION AND PARKS DEPARTMENT OF SAID CITY, AND THE CIVIL SERVICE COMMISSION OF THE CITY OF LOS ANGELES,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO GRANTING OF WRIT OF CERTIORARI

BURT PINES, City Attorney
JOHN B. RICE, Senior Assistant City Attorney
NEIL C. BAKER, Deputy City Attorney
MARIE C. BLITS, Deputy City Attorney

1800 City Hall East
200 North Main Street
Los Angeles, California 90012
(213) 485-6380

Attorneys for Respondents

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

NO. 77-1636

ROSALIE REED, Petitioner, vs. THE CITY OF LOS ANGELES, RECREATION AND PARKS DEPARTMENT OF SAID CITY, AND THE CIVIL SERVICE COMMISSION OF THE CITY OF LOS ANGELES, Respondents.	)

BRIEF OF RESPONDENTS IN OPPOSITION TO GRANTING OF WRIT OF CERTIORARI

BURT PINES, City Attorney
JOHN B. RICE, Senior Assistant City Attorney
NEIL C. BAKER, Deputy City Attorney
MARIE C. BLITS, Deputy City Attorney

1800 City Hall East
200 North Main Street
Los Angeles, California 90012
(213) 485-6380

Attorneys for Respondents

TOPICAL INDEX

	Page
Table of Authorities	iii
OPINIONS BELOW	2
JURISDICTION	3
QUESTION PRESENTED	3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	4
STATEMENT OF THE CASE	5
ARGUMENT	
I. THE ALLEGATION OF RACE AND SEX DISCRIMINATION WAS SEVERED INTO A SEPARATE ACTION BEFORE TRIAL AND MAY NOT PROPERLY BE REASSERTED NOW THROUGH THIS PETITION	12
II. DOES THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION REQUIRE REINSTATEMENT OF PETITIONER, A TENURED, CITY, CIVIL SERVICE EMPLOYEE, WHERE RESPONDENTS FAILED TO PROVIDE ADEQUATE PROCEDURAL DUE PROCESS PROTECTIONS PRIOR TO THE INITIAL DISCHARGE, EVEN THOUGH PETITIONER WAS AFFORDED	

TOPICAL INDEX (Cont'd.)

	Page
SUCH PROTECTIONS THROUGH A POST-DISCHARGE HEARING AND WAS AWARDED BACK PAY BY THE STATE COURTS FOR THE PERIOD BETWEEN THE INITIAL DISCHARGE AND COMPLETION OF THE POST-DISCHARGE HEARING?	15
A. Reinstatement is Not Constitutionally Required Where an Employee was Discharged for Good Cause, but Minimal Due Process Rights Attendant to Discharge Were Not Afforded Until After the Initial Discharge	16
B. No Federal Question is Raised by the Demand for Reinstatement	19
CONCLUSION	24
APPENDIX A - CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 1094.5	
APPENDIX B - LOS ANGELES CITY CHARTER SECTION 112(a)	

TABLE OF AUTHORITIES

Cases

	Page
Arnett v. Kennedy 416 U.S. 134 (1974)	16, 17
Barber v. State Personnel Board 18 Cal.3d (1976)	17, 18
Bishop v. Wood 426 U.S. 341 (1976)	19, 20 21
Eastlake v. Forest City Enterprises, 426 U.S. 668 (1976)	14
Ford v. Civil Service Commission, 161 Cal.App.2d 692 (1958)	23
Greer v. Board of Education 47 Cal.App.3d 98 (1975)	24
Keely v. State Personnel Board 53 Cal.App.3d 88 (1975)	11, 18
Kirkpatrick v. Civil Service Commission, 77 Cal.App.3d 940 (1978)	17, 18
Kristal v. State Personnel Board 50 Cal.App.3d 230 (1975)	18
Midstate Theatres v. County of Stanislaus, 55 Cal.App.3d 864 (1976)	24

TABLE OF AUTHORITIES (Cont'd.)

	Page
Cases (Cont'd.)	
Norton v. Blaylock, 285 F.Supp. 659, affirmed 409 F.2d 772 (5th Cir. 1968)	20, 21 22
Skelly v. State Personnel Board 15 Cal.3d 194 (1975)	16, 17, 18
Charter	
Los Angeles City Charter, Section 112	5
Los Angeles City Charter, Section 112(a)	4, 8
Code	
California Code of Civil Procedure, Section 1094.5 . . .	4, 8, 13, 18
Constitutions	
California Constitution Section 13, Article I	4
United States Constitution Fifth Amendment	4
Fourteenth Amendment	4

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

NO. 77-1636

ROSALIE REED,

Petitioner,

vs.

THE CITY OF LOS ANGELES, RECREATION AND PARKS DEPARTMENT OF SAID CITY, AND THE CIVIL SERVICE COMMISSION OF THE CITY OF LOS ANGELES,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO GRANTING OF WRIT OF CERTIORARI

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA */

* This should properly read "On Petition for Writ of Certiorari to the Court of Appeal of the State of California Second Appellate District Division Three", inasmuch as the Supreme Court of the State of California merely denied hearing following issuance of the Court of Appeal decision.

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATED JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Respondents, City of Los Angeles, et al., respectfully pray that the Petition for Writ of Certiorari to review the judgment of the Court of Appeal of the State of California, entered against Petitioner in the matter of Rosalie Reed v. City of Los Angeles, et al. (2d Civ. No. 50370) be denied.

OPINIONS BELOW

The opinion of the Court of Appeal of the State of California, Second Appellate District, Division Three, 2d Civ. No. 50370, filed December 20, 1977, is attached to the Petition as Appendix B.

The Findings of Fact and Conclusions of Law issued by the trial judge, sitting in the Superior Court of the State of California for the County of Los Angeles, Case No. 145080, are summarized in the Court of Appeal decision attached to the Petition as Appendix B. The Judgment Granting Peremptory Writ of Mandate is

attached to the Petition as Appendix C.

The decision of the Board of Civil Service Commissioners on February 27, 1976 sustaining the Hearing Examiner's recommendation of discharge is attached to the Petition as Appendix E.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Petitioner's first three (3) questions presented for review in this Petition when restated in view of the history of this litigation, are reduced to the following:

> Does the Due Process Clause of the United States Constitution require reinstatement of Petitioner, a tenured, city, civil service employee, where Respondents failed to provide adequate procedural due process protections prior to the initial discharge, even though Petitioner was afforded such protections through a post discharge hearing and was awarded back pay by the state courts for the period between the initial

discharge and completion of the post discharge hearing?

Petitioner's fourth question, concerning allegations of race and sex discrimination, is improperly presented through this Petition inasmuch as the issue was severed by the trial court and thus not tried, or reviewed by the state appellate courts.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Petition excerpts (pp. 5 and 6) as pertinent, the Fifth and Fourteenth Amendments to the United States Constitution, and Section 13, Article I of the California Constitution.

The California Code of Civil Procedure, Section 1094.5, is set forth in Appendix A.

The Los Angeles City Charter, Article IX, Section 112(a), is set forth in Appendix B.

STATEMENT OF THE CASE

Petitioner was hired by the Los Angeles Recreation and Parks Department as a Veterinarian at the Los Angeles Zoo in 1972 and became a permanent civil service employee. Petitioner was discharged from that position on September 6, 1974 without a predischarge hearing of any kind and filed a timely appeal from the discharge with the Los Angeles Civil Service Commission (hereinafter "the Commission"), pursuant to Section 112 of the Los Angeles City Charter.

The Commission appointed an impartial hearing examiner who conducted an administrative hearing on the merits of the charges upon which the discharge was based. Three full days of hearings were held on May 28, 29 and July 1, 1975. During these hearings, 11 witnesses, including the Petitioner, gave testimony with respect to the charges. The Petitioner testified at length on July 1, 1975 with respect to most of the charges but did not complete her direct testimony.

On August 25, 1975, Petitioner moved to dismiss the charges on ground that Petitioner had not been afforded her predischarge procedural due process rights.

On December 5, 1975, Petitioner appeared before the full Civil Service Commission, where the motion for dismissal was repeated, citing Skelly v. State Personnel Board, 15 Cal.3d 194 (1975) and a Recreation and Parks Department rule requiring predischarge notice. The Commission returned the matter to the Hearing Examiner to complete the hearing.

Petitioner then sought an injunction in Los Angeles Superior Court barring discharge until predischarge procedural due process rights were observed; the injunction was denied.

Shortly before the hearing on Petitioner's request for an injunction, Petitioner had been notified in writing by the Commission that further hearings were to take place before the Hearing Examiner on January 19, 1976, and if necessary, on January 20, 1976.

On January 19, 1976, the administrative hearing reconvened. Petitioner objected to further hearings on the merits pending a final ruling on the due process motion and refused to proceed with the hearing. The Hearing Examiner announced that he would make his ruling based upon the evidence that was before him. Petitioner again requested that the due process motion be ruled upon. The Hearing Examiner refused, stating that he would make that ruling when he made his recommendation to the Civil Service Commission.

The Hearing Examiner thereafter submitted a 36-page written report to the Commission indicating that Petitioner should have been given notice of the discharge and an opportunity to respond but recommending that the discharge be sustained on the evidence before him. His findings were that Petitioner had misappropriated City property for private use, that Petitioner falsified time records, that Petitioner failed to perform administrative duties, and that Petitioner failed to respond adequately to injured and dying Zoo animals.

In reviewing the findings of the Hearing Examiner, the Commission first recommended to the Recreation and Parks Department that Petitioner's discharge be amended to be a 60-day suspension. The Department refused to accept the suspension recommendation of the Commission. On February 27, 1976, the Commission then voted unanimously to sustain the discharge and made a factual finding that Petitioner had not been afforded her procedural due process rights until the administrative hearings had been completed on January 19, 1976. (Under the terms of the Charter of the City of Los Angeles, Section 112(a), the Commission is empowered to sustain the discharge of an employee by a City department or order reinstatement, but it may not amend the disciplinary action without the approval of the department.)

Petitioner then petitioned the Los Angeles County Superior Court for issuance of a Peremptory Writ of Mandate (C 145080) ordering back pay and reinstatement.

Pursuant to California Code of Civil Procedure Section 1094.5, the Superior

Court conducted an independent review of the administrative proceedings conducted under the purview of the Civil Service Commission and issued "Findings of Fact and Conclusions of Law" and "Judgment Granting Peremptory Writ of Mandate" on May 17, 1976. The "Conclusions of Law" were that;

> "1. Based on the portions of the administrative record presented to the Court, the Court finds Respondents' decision discharging Petitioner should be upheld. Respondents proposed conclusions #3, 4, 7, 8, 9, 10, 11 & 12 are incorporated herein by reference.
>
> "3. In a writ of mandate proceeding, the burden of proof rests on the petitioner to make a sufficient showing to establish administrative error and the petitioner has the initial burden of producing evidence.
>
> "4. The Petitioner failed to meet her burden of proof in rebutting the presumption that the Respondents regularly performed their official duties.
>
> "7. If the hearing examiner's report, received as Respondents' Exhibit A, is considered to be the administrative

record, the Court, in the exercise of its independent judgment, finds that the weight of the evidence supports the Civil Service Commission's findings and that those findings support its decision.

"8. The Petitioner was given reasonable and adequate notice that the administrative hearing on the merits of the charges against her was to proceed on January 19, 1976.

"9. The completion of the administrative hearing on January 19, 1976 was not an abuse of discretion.

"10. In the administrative proceedings, Respondents

"a. Did not proceed without or in excess of their jurisdiction;

"b. Granted Petitioner a fair trial; and

"c. Proceeded in the manner required by law.

"11. The Los Angeles Civil Service Commission is a Commission of special and limited jurisdiction.

"12. The Los Angeles Civil Service Commission did not have jurisdiction to dismiss the charges against the Petitioner on the basis of the Department of Recreation and Parks' failure to follow a Departmental statement of procedure.

"2. The Petitioner was not afforded her procedural due process rights prior to her discharge by the Department of Recreation and Parks on September 6, 1974, and therefore, her discharge was not constitutionally valid as of that date.

"3. The Court finds that the decision in Keely v. State Personnel Board, 53 C.A. 3d 88 (1975) is controlling, and therefore Petitioner's discharge was constitutionally valid as of January 19, 1976."

The Judgment ordered back pay, complete with normal raise and interest, from September 6, 1974, the date of the discharge, to January 19, 1976, the date of the completion of the post-discharge hearing.

Petitioner appealed from the judgment of the Superior Court to the Second District Court of Appeal, Division Three (2d Civ. No. 50370), which affirmed the findings and judgment of the Court below on

December 20, 1977, stating:

> "We are . . . satisfied that petitioner has been afforded due process and that the 'sense of outrage' and emotional appeal introduced into the case by her counsel is unwarranted by the record before us."

Petitioner's Petition for Rehearing before the Court of Appeal was denied without comment on January 26, 1978.

Petitioner then petitioned the California Supreme Court for hearing, which Petition was denied without comment, as was a subsequent Petition for Rehearing and Reconsideration.

This Petition followed.

ARGUMENT

I.

THE ALLEGATION OF RACE AND SEX DISCRIMINATION WAS SEVERED INTO A SEPARATE ACTION BEFORE TRIAL AND MAY NOT PROPERLY BE REASSERTED NOW THROUGH THIS PETITION

Petitioner's "First Amended Complaint for Declaratory Relief, for Damages,

General, Special, and Punitive, and Petition for Writ of Mandate," No. 145080, filed March 16, 1976, before the Los Angeles County Superior Court, consisted of four causes of action. Only the third cause of action alleged race and sex discrimination and that cause of action, along with the second cause of action which is not in issue herein, were severed upon motion of Petitioner at the time of trial. The Court granted Petitioner's motion, ruling that:

> "The motion to sever is granted. The second and third counts are severed from the balance of the complaint and shall hereafter be treated as a separate action.
>
> "The matter to be heard then this morning is only the 1094.5 mandate action contained in the first and fourth counts. . . ." (Reporter's Transcript, p. 25: 10-15.)

Thus trial proceeded as to the first and fourth causes of action, pursuant to the administrative mandamus provisions of California Code of Civil Procedure Section 1094.5.

In Petitioner's appeal to the California Second District Court of Appeal (2d Civ. No. 50370), sex and race discrimination were not mentioned in any of the stated nine issues on appeal (although the issue was later reasserted in Petitioner's Petition for Rehearing and Reconsideration before that same court).

The issues of sex and race discrimination were again not mentioned in Petitioner's Petition for Hearing in the California Supreme Court.

Inasmuch as the allegation of race and sex discrimination was severed from the current matter before trial and the state appellate courts did not hear these issues upon appeal, it would be completely inappropriate for this Court to entertain the issue at this stage of the proceedings. See Eastlake v. Forest City Enterprises, 426 U.S. 668, 671, nn.2b and 3b (1976).

II.

DOES THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION REQUIRE REINSTATEMENT OF PETITIONER, A TENURED, CITY, CIVIL SERVICE EMPLOYEE, WHERE RESPONDENTS FAILED TO PROVIDE ADEQUATE PROCEDURAL DUE PROCESS PROTECTIONS PRIOR TO THE INITIAL DISCHARGE, EVEN THOUGH PETITIONER WAS AFFORDED SUCH PROTECTIONS THROUGH A POST-DISCHARGE HEARING AND WAS AWARDED BACK PAY BY THE STATE COURTS FOR THE PERIOD BETWEEN THE INITIAL DISCHARGE AND COMPLETION OF THE POST-DISCHARGE HEARING?

Respondents have not and do not now dispute that, as found by the Hearing Examiner, the Commission, the Superior Court and the Court of Appeal, Petitioner was denied procedural due process rights in being initially discharged without first being advised of the underlying charges and afforded an opportunity to respond.

However, Petitioner was subsequently afforded more than the minimal procedural due process rights through the Civil Service Commission hearing process, which was completed before the discharge became effective. As a result, Petitioner received nearly $28,000.00 in back pay from

Respondents covering the time between the initial discharge and the actual effective date of discharge (which was the date of the completion of the civil service hearing).

This Petition demands, in addition, reinstatement as a remedy for the initial denial of procedural due process.

A. Reinstatement is Not Constitutionally Required Where an Employee was Discharged for Good Cause, but Minimal Due Process Rights Attendant to Discharge Were Not Afforded Until After the Initial Discharge.

The California Supreme Court held in Skelly v. State Personnel Board, 15 Cal. 3d 194 (1975), elaborating on Arnett v. Kennedy, 416 U.S. 134 (1974), that at minimum, pretermination procedures for permanent civil service employees must include: "notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline."

Id. at 215.

Although Petitioner was initially discharged prior to Skelly, pursuant to Barber v. State Personnel Board, 18 Cal.3d 395 (1976), Skelly requirements were made applicable to all pending cases where dismissals were not yet final, including that of Petitioner.

However, as recently explained in Kirkpatrick v. Civil Service Commission, 77 Cal.App.3d 940, 945-946 (1978):

> ". . . The minimal due process rights required by Skelly prior to discharge are merely anticipatory of the full rights which are accorded to the employee after discharge. The employee can exercise those rights at the subsequent hearing, and if that hearing shows that there were good grounds for dismissal, the employee is not entitled to reinstatement; he is merely entitled to damages for the limited time period in which discipline was wrongfully imposed, i.e., the employee is entitled to back pay for the period from the time discipline was actually imposed to the date the commission filed its decision validating the dismissal. (Barber v. State Personnel Bd.,

supra, 18 Cal.3d at pp. 401-403; Skelly v. State Personnel Bd., supra, 15 Cal.3d at p. 220, fn. 34; Kristal v. State Personnel Bd., supra, 50 Cal.App.3d at p. 241; Keely v. State Personnel Bd., supra, 53 Cal.App.3d at p. 98.)" (Emphasis in original.)

Petitioner in this case was afforded full Skelly rights and more before the discharge became effective on January 19, 1976. She was advised of the charges against her, and testimony and documentation was received in the hearing conducted by the Hearing Examiner. She had the opportunity to respond, but after testifying on direct for nearly a full day, declined to be cross-examined or present additional evidence, and the Examiner properly declared the hearing concluded.

The discharge was plainly for good cause. The Hearing Examiner found good cause for discharge, which was sustained by the Commission, and the Superior Court trial judge who reviewed the administrative proceedings pursuant to statutory administrative mandamus provisions (CCP § 1094.5) likewise found good cause for the discharge, and was upheld in that

regard by the Court of Appeal.

Back pay was awarded and paid Petitioner for the time period before the Skelly hearing was completed. Further remedy such as reinstatement is not legally, much less constitutionally, required.

B. No Federal Question is Raised by the Demand for Reinstatement

The procedures here utilized do not appear to conflict with any procedures approved in federal cases. In Bishop v. Wood, 426 U.S. 341 (1976) for example, this Court rejected a claim by petitioner that his discharge was based on mistaken information and that the discharge therefore violated his constitutionally-protected property interest. The Court held, however, that a constitutional claim does not arise whenever an employee is improperly discharged, unless the employee has been denied a constitutionally protected right:

"The federal court is not the appropriate forum in which to review the multitude of personnel

> decisions that are made daily by public agencies. We must accept the harsh fact that numerous individual mistakes are inevitable . . . . The United States Constitution cannot feasibly be construed to require federal judicial review for every such error." Id. at 349-50.

Where, as here, Petitioner was discharged for failure to fulfill the duties of her position as Veterinarian of the Los Angeles Zoo, no invasion of a constitutional right was involved in her discharge, and no federal constitutional question can be raised by her demand for reinstatement once minimal due process rights attendant to discharge are observed.

Aside from considerations of race, religion or constitutionally protected conduct, none of which appear to be involved here, the underlying right of a public employee to job security is found in the civil service statute in question, not the constitution. See Norton v. Blaylock, 285 F.Supp. 659, affirmed 409 F.2d 772 (5th Cir. 1969).

As this Court in Bishop v. Wood observed:

> "The fact . . . is that the instances in which the federal judiciary has required a state agency to reinstate a discharged employee for failure to provide a pretermination hearing are extremely rare. The reason is clear. For unless we were to . . . develop a federal common law of property rights, or [the] equally far-reaching view that almost every discharge implicates a constitutionally protected liberty interest, the ultimate control of state personnel relationships is, and will remain, with the States; they may grant or withhold tenure at their unfettered discretion." Id. at 349, n.14.

Federal cases have also considered and rejected claims of denial of due process by employees where the appointing authority has disregarded the recommendation of an appeals board. In Norton v. Blaylock, 285 F.Supp. 659 (W.D. Ark. 1968), the court held that the decision of an administrative tribunal favorable to an employee discharged by the appointing authority does not raise a federal constitutional claim:

> ". . . As far as the federal requirements and the Constitution

are concerned, all that the plaintiff was entitled to was a hearing. As stated, she received a hearing before a tribunal which obviously was not unlawfully prejudiced against her and in the Court's estimation the ultimate action of defendants in refusing to reinstate her has inflicted no legal wrong upon her. In other words, under the Constitution and the federal statutory and regulatory requirements, as written, she has no cause of action." Id. at 664.

That decision was affirmed on appeal to the Fifth Circuit, which remarked that:

"We agree with Judge Henley's reasoning that whether as a matter of policy the head of an agency should be bound by a decision of the Council is a question which does not address itself to the courts. If the rules and regulations for operation of the merit system are inadequate to safeguard the rights of employees, relief should be sought from the executive or legislative branches of the federal and state governments." Norton v. Blaylock, 409 F.2d 772, 774, n.1 (5th Cir. 1969).

Petitioner's assertion that the fact that a Deputy City Attorney represented the Department of Recreation and Parks in the administrative proceeding and that an Assistant City Attorney advised the Board of Civil Service Commissioners on legal questions (only) constituted a denial of due process, and that mere performance of these separate functions by members of the same public law office is per se a constitutional violation is fallacious. It is established California law that in the absence of proof of improper influence or overreaching or some specific denial of a fair hearing as a result of the action of the representatives of the public law office, it cannot be said that the mere fact that one member of the office performs an advocate's role for a City department and another member performs an advisory function to the Civil Service Commission constitutes a denial of due process. Ford v. Civil Service Commission, 161 Cal.App.2d 692 at 697 (1958) (where one county counsel represented a county department and another county counsel advised the county civil service

commission on legal questions during administrative hearings). Greer v. Board of Education, 47 Cal.App.3d at 119-120 (1975); see also Midstate Theatres v. County of Stanislaus, 55 Cal.App.3d 864 (1976).

No evidence exists in the present record to support a claim that the dual functions of the City Attorney's Office operated to deny Petitioner a fair hearing, and thus no true question of denial of due process is actually raised.

CONCLUSION

The Petition presents no substantial federal questions for review. No conflict between state and/or federal court decisions appears. No federal constitutional right of Petitioner appears to have been violated; failure to afford pretermination advisement of the reasons for discharge and an opportunity for response is not irremediable and fatal to ultimate sustaining of the discharge.

The procedural due process violation was more than remedied by providing Petitioner the opportunity for a full hearing

on the merits of the discharge before an impartial hearing examiner, and by payment of back pay, including normal raises and interest, up to the date of completion of the Skelly hearing. That hearing concluded that discharge was appropriate based upon the sustained charges against Petitioner, that she had misappropriated Zoo funds and supplies, falsified time sheets, and failed to adequately attend injured and dying animals. Petitioner's complaint that she did not sufficiently respond to the charges during the hearing is completely misplaced, in that she refused on the fourth day of proceedings to further participate, despite the offer of the Hearing Examiner to re-subpoena any witnesses requested by Petitioner; she denied herself the opportunity to more completely respond to the charges.

No federal question is presented by the demand for reinstatement inasmuch as the minimal due process rights attendant to discharge have now been observed, and no issues of race or sex discrimination (having been severed before trial) or constitutionally protected conduct are here involved.

Neither does the City civil service system, enacted by voters as a part of the City Charter, raise a federal question by the provision that the Commission may not amend a disciplinary action except with the approval of the appropriate City department. Further, a federal question is not raised by the mere fact that one Deputy City Attorney represented the Department of Recreation and Parks while an Assistant City Attorney provided legal advice to the Commission.

As the state Court of Appeal concluded, Petitioner has been afforded due process, and no amount of outrage, emotionalism, or reference to matters outside the record can change that fact.

Respondents respectfully request that this Petition for Writ of Certiorari be denied.

DATED: June 21, 1978

Respectfully submitted,

BURT PINES, City Attorney
JOHN B. RICE, Senior Assistant City Attorney
NEIL C. BAKER, Deputy City Attorney
MARIE C. BLITS, Deputy City Attorney

By MARIE C. BLITS
Deputy City Attorney

Attorneys for Respondents

APPENDIX A

APPENDIX A

CALIFORNIA CODE OF CIVIL PROCEDURE

§ 1094.5 [Inquiry into validity of administrative order or decision]

(a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal, corporation, board or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board or officer may be filed with the petition, may be filed with respondent's points and authorities or may be ordered to be filed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, such expense shall be taxable as costs.

(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) Where the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (e) of this section remanding

the case to be reconsidered in the light of such evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit such evidence at the hearing on the writ without remanding the case.

(e) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in the light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

(f) Except as provided in subdivision (g), the court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing such

notice whichever occurs first; provided that no such stay shall be imposed or continued if the court is satisfied that it is against the public interest; provided that the application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which such appeal is taken; provided that, in cases where a stay is in effect at the time of filing the notice of appeal, such stay shall be continued by operation of law for a period of twenty (20) days from the filing of such notice. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which such appeal is taken shall otherwise order. Where any final administrative order or

decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of such proceedings.

(g) The court in which proceedings under this section are instituted may stay the operation of the administrative order or decision of any licensing board respecting any person licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, except Chapter 11 (commencing with Section 4800) thereof, or licensed pursuant to the Osteopathic Initiative Act or the Chiropractice Initiative Act pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing such notice whichever occurs first; provided that such stay shall not be imposed or continued unless the court is satisfied that the public interest will

not suffer and the licensing board is unlikely to prevail ultimately on the merits; and provided further that the application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which such appeal is taken; provided that, in cases where a stay is in effect at the time of filing the notice of appeal, such stay shall be continued by operation of law for a period of twenty (20) days from the filing of such notice. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which such appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed

while the penalty imposed is in full force and effect the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of such proceedings.

APPENDIX B

CHARTER OF THE CITY OF LOS ANGELES

Sec. 112. (a) Any board or officer having the power of appointment of officers, members and employees in any department of the government of the city shall have the power to remove, discharge or suspend any officer, member or employee of such department; but no person in the classified civil service of the city, other than an unskilled laborer employed by the day, shall be removed, discharged or suspended except for cause, which shall be stated in writing by the board or officer having the power to make such removal, discharge or suspension, and filed with the Board of Civil Service Commissioners, with certification that a copy of such statement has been served upon the person so removed, discharged or suspended, personally, or by leaving a copy thereof at his last known place of residence if he cannot be found. Upon such filing such removal, discharge or suspension shall take effect. Within fifteen days after such statement shall have been filed, the said board, upon its own motion, may, or upon written application of the person so removed, discharged or suspended, filed with said board within five days after service upon him of such statement, shall proceed to investigate the grounds for such removal, discharge or suspension. If after such investigation said board finds, in writing, that the grounds stated for such removal, discharge or suspension were insufficient or were not sustained, and also finds in writing that the person removed, discharged or suspended is a fit and suitable person to fill the position from which he was removed, discharged or suspended, said board shall order said person so removed, discharged or suspended to be reinstated or restored to duty. The board with the consent of the appointing authority may also order a reduction in the length of the suspension, or substitution of a suspension for a removal or discharge, if the board finds, in writing, that such action is warranted. The order of said board with respect to such removal, discharge or suspension shall be forthwith certified to the appointing board or officer, and shall be final and conclusive; provided, that the order of any appointing board or officer suspending any person because of lack of funds in such department shall be final, and shall not be subject to review by said

Board of Civil Service Commissioners. If the Board of Civil Service Commissioners shall order that any person removed, discharged or suspended under the provisions of this section be reinstated or restored as above provided, the person so removed, discharged or suspended shall be entitled to receive compensation from the city the same as if he had not been removed, discharged or suspended by the appointing board or officer. (Amended, 1957.)

SINCE 1922

THE BRIEF SHOP
10844 VENTURA BOULEVARD
NORTH HOLLYWOOD, CA. 91604

LAWYERS BRIEF SERVICE
LEGAL & COMM. PRINTING
(213) 877-8620 763-2965

Produced By Copy-Print Method